

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|  |   |                          |
|--|---|--------------------------|
| JOSEPH J. GERMINARO, an                  | ) |                          |
| individual, and GABRIELLA P.             | ) |                          |
| GERMINARO, an individual,                | ) | Civil Action No. 14-1202 |
|  | ) |                          |
| Plaintiffs,                              | ) | Judge Nora Barry Fischer |
|  | ) |                          |
| v.                                       | ) |                          |
|  | ) |                          |
| LAWYERS TITLE INSURANCE                  | ) |                          |
| CORPORATION, a Nebraska corporation,     | ) |                          |
| a/k/a LAWYERS TITLE INSURANCE            | ) |                          |
| COMPANY, COMMONWEALTH LAND               | ) |                          |
| TITLE INSURANCE CORPORATION, a           | ) |                          |
| Nebraska corporation, and DOES 1 through | ) |                          |
| 100,                                     | ) |                          |
|  | ) |                          |
| Defendants.                              | ) |                          |

**MEMORANDUM ORDER**

AND NOW, this 21<sup>st</sup> day of October, 2014, upon consideration of Defendants Lawyers Title Insurance Corporation and Commonwealth Land Title Insurance Corporation's Motion to Dismiss (Docket No. [34]), Plaintiff's Response in Opposition thereto (Docket No. [38]), the documents submitted in said Defendants' Request for Judicial Notice (Docket No. [34-2]) and the Plaintiff's Request for Judicial Notice (Docket No. [39]), said Defendants' Reply in Support of their Motion to Dismiss (Docket No. [43]), and said Defendants' Opposition to Plaintiffs' Request for Judicial Notice (Docket No. [44]),

IT IS HEREBY ORDERED that said Defendants' Motion (Docket No. [34]) is DENIED, with prejudice. In support of this ORDER, the Court notes:

It is clear that this matter was transferred to this Court pursuant to 28 U.S.C. § 1404(a). To that end, this Court must apply the choice of law principles of the transferor court, the United States District Court for the Central District of California. *Van Dusen v. Barrack*, 376 U.S. 612,

639 (1964). *Van Dusen* established when an action is transferred pursuant to § 1404(a) on motion of the defendant, the transferee court must apply the law of the initial forum. *Id.* As the United States Court of Appeals for the Third Circuit has held, the *Van Dusen* rule applies to *sua sponte* transfers. *Amica Mut. Ins. Co. v. Fogel*, 656 F.3d 167, 171 (3d Cir. 2011), as amended (Dec. 9, 2011) (citing *Ferens v. John Deere Co.*, 494 U.S. 516, 530-31 (1990)). Here, Defendants moved the Central District of California court to transfer this matter to Pennsylvania state court pursuant to the common law doctrine of *forum non conveniens*. Judge Christina Snyder of the Central District of California ordered the parties to brief the issue of a § 1404(a) transfer, and following same, she transferred the instant action to the Western District of Pennsylvania. Whether this transfer is construed as a *sua sponte* transfer or a transfer based on motion of Defendants, this Court must apply the choice of law principles of the transferor forum, California.

Despite the holdings in *Van Dusen*, *Ferens*, and *Amica*, neither party has briefed the appropriate choice of law analysis. The Court reminds the parties that it adheres to Rule 1 of the Federal Rule of Civil Procedure, and by their inaccurate briefing, the parties have not complied with same. Further, Plaintiffs have not complied with Local Civil Rule 7.1B, which states:

[a]ny party filing a civil action under 18 U.S.C. §§ 1961-1968 shall file with the complaint, or within fourteen (14) days thereafter, a RICO case statement in the form set forth at "Appendix LCvR 7.1B" or in another form as directed by the Court.

LcvR 7.1B, <https://www.pawd.uscourts.gov/Documents/Forms/lrmanual.pdf>. Likewise, they have not complied with this Court's Practices and Procedures § VI.C (updated Feb. 5, 2013) ("With respect to RICO actions, the Court requires that the plaintiff file a RICO Case Statement within fourteen (14) days of the filing of the Complaint in the form set forth at 'Appendix LcvR 7.1.B' of the Local Rules."). Plaintiffs shall comply with said Local Rule and file their RICO Case Statement **no later than November 4, 2014.**

Defendants Lawyers Title Insurance Corporation and Commonwealth Land Title Insurance Corporation shall file an Answer to Plaintiffs' Second Amended Complaint **no later than November 25, 2014.**

Accordingly, Defendants Lawyers Title Insurance Corporation and Commonwealth Land Title Insurance Corporation's Motion [34] is DENIED and oral argument on same, scheduled **for October 23, 2014, is CANCELLED.**

*s/ Nora Barry Fischer*  
Nora Barry Fischer  
United States District Judge

cc/ecf: All counsel of record.